

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MITCHELL GARRAWAY,

Plaintiff-Appellee,

v.

JACQUILINE CIUFO; K. MILLER; J. ZARAGOZA,

Defendants-Appellants.

No. 23-15482

**APPELLANTS' OPPOSITION TO APPELLEE'S
SECOND MOTION TO DISMISS**

Defendants-appellants respectfully submit the following opposition to plaintiff-appellee's second motion to dismiss this appeal, docketed on June 5, 2023.

STATEMENT

A full account of the facts of this appeal is included in defendants' opposition to plaintiff's first motion to dismiss, Dkt. 7, and in defendants' response to this Court's order to show cause, Dkt. 8. The statement below summarizes only the procedural history relevant to plaintiff's second motion to dismiss, Dkt. 9.

On April 17, 2023, this Court docketed plaintiff's first motion to dismiss the appeal, which argued that appellate jurisdiction did not exist under 28 U.S.C. § 1292(a) and (b). Dkt. 4. On April 27, 2023, defendants filed an opposition to

plaintiff's motion, arguing that this Court has jurisdiction under 28 U.S.C. § 1291 and the collateral-order doctrine. Dkt. 7. Shortly before defendants filed that opposition, on April 25, 2023, this Court entered an order to show cause within twenty-one days why this appeal should not be dismissed for lack of jurisdiction. Dkt. 6. On May 16, 2023, defendants timely responded to that order. Dkt. 8.

On June 6, 2023, this Court docketed plaintiff's second motion to dismiss the present appeal. Dkt. 9. Plaintiff's motion asserts that, as of May 25, 2023, defendants had not responded to the Court's order to show cause. *Id.* at 1. Defendants submit this response to plaintiff's second motion.

ARGUMENT

Plaintiff's second motion to dismiss should be denied. The motion rests (at 1) on the sole ground that defendants allegedly failed to respond to this Court's order to show cause. Defendants in fact filed such a response, as reflected on the Court's docket. *See* Dkt. 8.

However, it appears from plaintiff's motion that plaintiff did not receive a copy of defendants' response, notwithstanding defendants' service of the response by mail. *See* Dkt. 8. Defendants accordingly would not oppose an extension of time for plaintiff to reply to defendants' response. In addition, defendants will include an additional copy of their response with service of this opposition.

CONCLUSION

For the foregoing reasons, plaintiff's second motion to dismiss should be denied.

Respectfully submitted,

BARBARA L. HERWIG

s/ Weili J. Shaw

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JUNE 2023

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 352 words, according to the count of Microsoft Word.

s/ Weili J. Shaw

WEILI J. SHAW

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing on June 13, 2023, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the CM/ECF system.

I certify that I served the foregoing on the same date by First Class Mail on the following recipient:

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s/ Weili J. Shaw

WEILI J. SHAW